IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2007

Coram

THE HONOURABLE Mr. JUSTICE P.JYOTHIMANI

Writ Petition No.36382 of 2007
and M.P.Nos.1 and 2 of 2007

Mrs. E.Devi .... Petitioner

-Vs.-

1. Union of India,
   Reptd. by the Secretary to Government,
   Department of Banking
   Ministry of Finance, Jeevandeep Building,
   Parliament Street, New Delhi
2. The Branch Manager,
   Indian Bank, Dharapuram Branch,
   Dharapuram Town,
   Erode District
3. The Authorized Officer,
   under the Securitization Act,
   Indian Bank, Circle Office,
   359 Dr. Nanjappa Road, Coimbatore - 641 018
4. The Debt Recovery Tribunal,
   Coimbatore reptd. by its
   Registrar, functioning at
   Trichy Road, Coimbatore - 45
5. Mr. Mahalingam,
   The Presiding Officer,
   Debt Recovery Tribunal
   Trichy Road, Coimbatore - 45 .... Respondents

PRAYER.: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certioarified mandamus to call for the records of Respondents 2 and 3 culminated in the impugned auction sale notice, dated 29.10.2007, issued by the third respondent herein quash the said impugned notice dated 29.10.2007 as illegal and without the authority of law and consequently directing the fourth and fifth respondents to entertain and dispose of the application filed by the petitioner under Section 17 of the SARFAESI Act in accordance with law and to the facts and circumstances of the case on hand.

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For Petitioner : Mrs. Mathews Nedumpara
For Respondents : Mr. Jayesh B.Dolia, for
M/s. Aryar's Dock, for R-2 & R-3.

O R D E R

The writ petition is filed for the issuance of a writ of certioarified mandamus to call for the records of Respondents 2 and 3 culminated in the impugned auction sale notice, dated 29.10.2007, issued by the third respondent herein, quash the same as illegal and without the authority of law and consequently directing the fourth and fifth respondents to entertain and dispose of the application filed by the petitioner under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) (hereinafter referred to as "the Act") in accordance with law and to the facts and circumstances of the case on hand.

2. Heard the learned counsel for the petitioner as well as Mr.Jayesh B.Dolia, learned counsel, who had taken notice on behalf of Bank-respondents 2 and 3.

3. In respect of the borrowal by the petitioner from the second respondent-Bank, proceedings under Section 13(2) of the Act was initiated by the Bank by notice dated 04.08.2007. As per the said notice an amount of Rs.1,01,08,158/- was outstanding from the petitioner to the second respondent-Bank as on 30.06.2007. Subsequently, the possession notice was ordered, by virtue of the powers under Section 13(4) of the Act on 09.10.2007 by the third respondent. Admittedly, as against the said possession notice issued under Section 13(4) of the Act, the petitioner has approached the Debts Recovery Tribunal, Coimbatore, by filing an Original Application No.124 of 2007.

4. Learned counsel for the petitioner vehemently contended that as per the judgment of the Supreme Court of India in the case of Mardia Chemicals Ltd., etc., etc., v. Union of India and others, etc., etc., and reported in 2004 (2) C.T.C. 759, it has been held that due opportunity should have been given to the petitioner before the Bank having resorted to the proceedings under Section 13(4) of the Act. His further contention is that it is true that the petitioner has filed an appeal under Section 17 of the Act before the Debts Recovery Tribunal, Coimbatore and further, the Debts Recovery Tribunal, Coimbatore, has adjourned the matter to January 2008 and in the meantime the Bank has proceeded to sell the property by fixing the upset price as Rs.90 lakhs. In view of the same the petitioner was constrained to move this Court by filing the present writ petition.

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5. On the other hand, Mr. Jayesh B.Dolia, learned counsel for the Bank-respondents 2 and 3 submitted that the petitioner having resorted to his remedy under Section 17 of the Act, by filing an appeal, cannot come before this Court under Article 226 of the Constitution of India and whatever defence available to him under the Act, she is always entitled to raise the same before the Tribunal in the Original Application No.124 of 2007 filed by her. He also fairly submitted that even if a time frame is given to the Debts Recovery Tribunal to decide the issue involved in the said application and stay petition filed by the petitioner, he has no objection for the same to which course of action the learned counsel for the petitioner has also agreed that the petitioner may be directed to go before the Debts Recovery Tribunal for stay as well as for the original application at an early date and pass appropriate orders especially in the stay petition.

6. In view of the submissions made by the learned counsel on either side and in view of the Mardia Chemical's case where the law is well settled by the Supreme Court that once the person is affected by the action of the Bank under Section 13(4) of the Act, a remedy is available under Section 17 of the Act, the writ petition is disposed of with the direction to the Debts Recovery Tribunal, Coimbatore, to take up the application filed by the petitioner in O.S.No.124 of 2007 along with the application filed by the petitioner for stay in I.A.No.2428 of 2007 of further proceedings, pursuant to the proceedings of the Bank under Section 13(4) of the Act and pass appropriate orders. It is made clear that even if the Debts Recovery Tribunal, Coimbatore, is in dearth of time in taking up the original application filed by the petitioner, it shall take interlocutory application for stay and decide the same after hearing both the parties within a period of ten (10) days from the date of receipt of a copy of this order. It is made clear that it is open to the petitioner to raise all the points which she has raised in this writ petition, in the application filed by her for stay as well as for original application.

7. In view of the above view taken by this Court, the other contentions relating to the merits of the case are not considered. No costs. Consequently, the connected MPs are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government, Union of India,
   Department of Banking, Ministry of Finance, Jeevandeep Building,
   Parliament Street, New Delhi

2. The Branch Manager, Indian Bank, Dharapuram Branch,
   Dharapuram Town, Erode District

3. The Authorized Officer, under the Securitization Act,
   Indian Bank, Circle Office,
   359 Dr. Nanjappa Road, Coimbatore - 641 018

4. The Debt Recovery Tribunal,
   Coimbatore reptd. by its
   Registrar, functioning at
   Trichy Road, Coimbatore - 45

1 cc To M/s.Mathews Nedumpara, Advocate, SR.72646.
1 cc To M/S.Aiyar & Dolia, Advocate, SR.72670.

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KS(CO)
RVL 10.12.2007

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